

REMARKS

Claims 1-7 are pending in the present application. Claims 8-20 have been cancelled by way of previous amendments.

The Examiner has rejected claims 1-7 under 35 U.S.C. § 103(a) as being obvious over US Patent Application Publication 2003/0147402 to Ould-Brahim (hereinafter "Ould-Brahim") in view of figures 1-2 and paragraphs [0036]-[0045] of the instant application (hereinafter the admitted prior art or "APA").

The Office Action was issued following the United States Supreme Court's decision in the case of KSR Int'l Co. v. Teleflex Inc., No. 04-1350 (April 30, 2007). In light of the KSR decision, Applicant wishes to address various issues pertaining to a proper analysis under section 103.

The Examiner, by citing references and asserting a reason for combining elements from the references, has elected to base rejection upon a teaching, suggestion or motivation to select and combine features from the cited references. Applicant wishes to point out that the Supreme Court's KSR decision did not reject use of a "teaching, suggestion or motivation" analysis as part of an obviousness analysis, characterizing the analysis as "a helpful insight." KSR slip op. at 14-15.

When the Examiner chooses to base a rejection upon a teaching, suggestion or motivation analysis, the Examiner must satisfy the requirements of such

an analysis. In particular, the Examiner must demonstrate with evidence and reasoned argument that there was a teaching, suggestion or motivation to select and combine features from the cited references. E.g., In re Lee, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002). Moreover, the prior art must suggest the desirability of the combination, not merely the feasibility. In re Fulton, 73 USPQ2d 1141, 1145 (Fed. Cir. 2004).

In those instances in which an Examiner relies upon a single reference, there must be evidence of a teaching, suggestion or motivation to modify that reference. In re Kotzab, 55 USPQ2d 1313, 1316-17 (Fed. Cir. 2000).

In the event that the cited references fail to disclose or suggest all of the elements recited in the claims, then combining elements from the references would not yield the claimed subject matter, regardless of the extent of any teaching, suggestion or motivation.

Although the Supreme Court did not reject use of a “teaching, suggestion or motivation” analysis, the Supreme Court did say that it was not the only possible analysis of an obviousness question. Because of the Examiner’s chosen ground for rejection, however, the only pending ground for rejection must be a “teaching, suggestion or motivation” analysis. In the event that the Examiner chooses to consider a different avenue for rejection, this would be a new ground for rejection not due to any action by Applicant. Applicant has a right to be heard on any new ground for rejection.

Applicant further respectfully reminds the Examiner that, even after KSR,

the following legal principles are still valid, having been endorsed by the Supreme Court or having been unaffected by its decision: (1) the USPTO still has the burden of proof on the issue of obviousness; (2) the USPTO must base its decision upon evidence, and it must support its decision with articulated reasoning (slip op. at 14); (3) merely demonstrating that all elements of the claimed invention exist in the prior art is not sufficient to support a determination of obviousness (slip op. at 14-15); (4) hindsight has no place in an obviousness analysis (slip op. at 17); and (5) Applicant is entitled to a careful, thorough, professional examination of the claims (slip op. at 7, 23, in which the Supreme Court remarked that a poor examination reflected poorly upon the USPTO).

Claim 1 has been amended to specify that the claimed matrix of switching elements and routing elements is arranged in a CLOS architecture. Support for the amendments may be found in FIG. 3 of the present application and in paragraphs [0046] and [0047] of the present application as published.

Claims 2, 3 and 4 have been amended to expand acronyms. Claim 6 has been amended to correct a typographical error.

FIG. 1 of the present application illustrates a matrix of only switching elements arranged in a CLOS architecture. FIG. 3 of the present application illustrates interconnected GLSRs 100. The GLSRs 100 each comprise a matrix of elements similar to the matrix illustrated in FIG. 1. However, relative to the matrix illustrated in FIG. 1, switching elements have been replaced, at various locations, with routing elements (see paragraph [0046]). The Applicant submits that Ould-Brahim does not suggest or

disclose replacing a switching element, in a matrix of switching elements arranged in a CLOS architecture, with a routing element.

Since neither Ould-Brahim nor APA nor a combination of Ould-Brahim nor APA disclose or suggest "a matrix of switching elements and routing elements arranged in a CLOS architecture" as required by claim 1, as amended, the Applicant submits that claim 1 may not be rejected under 35 U.S.C. § 103(a) as being obvious over Ould-Brahim in view of APA. The Applicant respectfully requests that the Examiner remove the rejection of claim 1, and claims 2-7 dependent, either directly or indirectly, thereon, on that basis.

In view of the foregoing, the Applicant respectfully submits that claims 1-7 of the instant application are now in condition for allowance. Favorable reconsideration and allowance of claims 1-7 are respectfully requested.

Respectfully Submitted,

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Date

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